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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1961

No. 19

CHARLES PAUL, Director of Agriculture of the State of California, and STANLEY MOSK, Attorney General, State of California,

*Appellants,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

On Appeal From the United States District Court for the Northern District of California, Southern Division.

## Brief of Dairy Institute of California, Milk Industry Foundation, Alameda County Milk Dealers Association, San Francisco Milk Council, Santa Clara County Milk Dealers Association, Dairymens Service Association, General Dairy Industry Committee of Southern California, as Amici Curiae in Support of Appellants' Jurisdictional Statement.

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### Brief Filed With Consent of Parties.

All parties to the case have given their written consent to the filing of this brief. Such consents have been filed with the Court concurrently with the filing of the brief.

## Interest of Amici Curiae.

Dairy Institute of California, Milk Industry Foundation, Alameda County Milk Dealers Association, San Francisco Milk Council, Santa Clara County Milk Dealers Association, Dairymens Service Association, and General Dairy Industry Committee of Southern California are all nonprofit trade associations, the membership of each of which is composed of persons engaged in the business of processing and distributing fluid milk and other dairy products.[1]

All members of Dairy Institute of California, Alameda County Milk Dealers Association, San Francisco Milk Council, Santa Clara County Milk Dealers Association, Dairymens Service Association, and General Dairy Industry Committee of Southern California, and all members of Milk Industry Foundation doing business in California, are subject to the California Milk Stabilization Act.[2] All such members, as well as members of Milk Industry Foundation with offices outside California, are eligible to, and many of such members do, sell fluid milk and dairy products to agencies of the United States Government. All *amici* and their

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[1]Members of Dairy Institute of California process and distribute a substantial portion of all fluid milk and dairy products processed and distributed throughout the State of California. Members of Milk Industry Foundation (1145 - 19th Street, N.W., Washington, D. C.) operate throughout the United States and in some foreign countries. Members of Alameda County Milk Dealers Association, San Francisco Milk Council and Santa Clara County Milk Dealers Association have principal offices in the Northern California area in which the present case originated. Members of Dairymens Service Association have principal offices in Southern California in San Bernardino and Riverside Counties. Members of General Dairy Industry Committee have principal offices in the Southern California area.

[2]California Agricultural Code, Sections 4200 *et seq.*

members, therefore, have an important economic interest in the determination of the question presented by the case, and regard the decision of the United States District Court below as having an extremely adverse impact upon the right of the State of California, and of states generally, to deal effectively through legislation with the stabilization of the economy of the dairy industry.

## ARGUMENT.

### Both the Minimum Producer and the Minimum Wholesale Pricing Provisions of the California Milk Stabilization Act Apply in Their Entirety to Sales of Fluid Milk to Federal Agencies Upon Land Over Which the State of California Retains Jurisdiction.

The California Milk Stabilization Act is an important exercise of the State police power, applied to achieve stability for the past twenty-four years in the State's second largest industry. Such stability is accomplished through establishment by the Director of Agriculture of minimum prices to be paid by distributors to producers for fluid milk and of minimum prices for sales of processed fluid milk by distributors at wholesale and retail. The present case presents the question of the application of the minimum producer and minimum wholesale pricing provisions of the Act to sales of fluid milk to agencies of the Federal Government upon land over which the State of California asserts jurisdiction.

The essential purpose of a milk stabilization act is defeated by exceptions to the act.

"Prescribed minimum prices fail of their purpose if they lie in the shadow of cut prices."[3]

Six per cent of total fluid milk sales in the State of California are made to agencies of the Federal Government.[4] An exemption of this consequence from the provisions of the Milk Stabilization Act will lead inevitably to losses to both fluid milk distributors and producers, the undermining of sanitary regulations and the impairment of public health, the prevention of all such consequences being the purpose of the Milk Stabilization Act.[5]

The California courts in construing the Milk Stabilization Act have expressly recognized that its purpose is defeated by exceptions. For example, the courts have rejected the attempt by cooperative associations of producers acting as distributors to secure exemption from the provisions of the Act specifying minimum returns by distributors to producers.[6]

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[3]*Pacific Coast Dairy v. Department of Agriculture*, 19 Cal. 2d 818, p. 822 (1942) (Rev'd on other grounds, 318 U. S. 285 (1943)).

[4]R. 324, 419.

[5]"A price below a fixed minimum for milk produced in the state endangers those established standards for the milk industry that safeguard the public health and lead successively to a breakdown of the law, price cutting, diminishing returns to the producers, inferior standards of milk production and generally injurious effects on the public health." (*Pacific Coast Dairy v. Department of Agriculture*, 19 Cal. 2d 818, 826 (1942)) (rev'd on other grounds, 318 U. S. 285 (1943)).

[6]"Petitioners . . . point out that a cooperative, from the very nature of its organization, cannot return the price fixed by the 'Director' for milk, if its net returns are less than such price; that in cooperatives, the producer-member is the owner, and that he receives the profits from its marketing activities, and should therefore bear any loss. It must be assumed that the foregoing effect upon cooperative organizations must have been foreseen by

In addition to its application without exception to the dairy industry *the California Milk Stabilization Act requires the concurrent existence of both its minimum producer pricing provisions and its minimum wholesale pricing provisions.* The Director of Agriculture has no authority to separate the two types of pricing provisions but instead is required to establish minimum wholesale prices in marketing areas where minimum producer prices are established.[7] Where minimum producer prices are terminated in a marketing area minimum wholesale prices are forthwith terminated.[8] Further, from a practical economic standpoint experience in the administration of the Act demonstrates that minimum producer pricing cannot be effectively enforced in respect to sales of fluid milk to federal agencies without state regulation of minimum wholesale pricing for such sales.[9]

The California Milk Stabilization Act must therefore, by its stated purposes and requirements, be en

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the Legislature, but that they considered that the health and general welfare of the people as a whole were paramount over such matters as the internal management of such associations, and their customary method of operation. *The print of a legislative intent to make the Milk Control Act all-inclusive is so apparent and strong that considerations of the force and nature we have now before it.*" *United Milk Producers v. Cecil*, 42 Cal. App. 2d 748, p. 760 (1941). (Emphasis supplied.)

[7]California Agricultural Code, Section 4351.5

[8]California Agricultural Code, Section 4351.5

[9]Enforcement by the Director of Agriculture, against cooperative associations of producers acting as distributors, of minimum producer returns from federal sales has not as yet been achieved in any litigation, whether instituted by the Director before or after the partial stay of injunctions ordered in the present case on July 3, 1941 (*Cal., Ware v. Milk Producers Assn.*, Stanislaus County Superior Court No. 19395 [R. 921]; *Paul v. Allied Dairymen, Inc.*, Tulare County Superior Court No. 50335).

forced in its entirety by the Director of Agriculture —both as to minimum producer and minimum wholesale pricing provisions—in respect to sales of fluid milk to agencies of the Federal Government upon land over which the State of California has jurisdiction.

The decision of the District Court below was that such application of the Milk Stabilization Act is prevented because of conflict between the Act and the Armed Services Procurement Act of 1947.[10] This contention was disposed of almost twenty years ago adversely to the United States in *Penn Dairies, Inc. v. Milk Control Commission*.[11] The requirements of the present Armed Services Procurement Act in respect to competitive bidding are not in any material way different from similar provisions in force at the time of the *Penn Dairies* case. In fact the enactment of the Armed Services Procurement Act in its present form, after the *Penn Dairies* decision, without any express statutory provision declaring state price fixing regulations inapplicable to fluid milk purchased by federal agencies, furnishes a persuasive reason for concluding today, as at the time of the *Penn. Dairies* case, that such laws as the California Milk Stabilization Act are not considered by the United States Congress as an interference with a federal function.

The District Court below erred in concluding that the California Milk Stabilization Act contains different provisions from the Pennsylvania Milk Control Law (before this Court in the *Penn Dairies* case) in respect to its application to federal procurement officers

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[10] 10 U. S. C. Par. 2301, *et seq.*

[11] 318 U. S. 261 (1943).

as purchasers of milk. As in the *Penn Dairies* situation the State of California does not assert that its Milk Stabilization Act places federal procurement officers under criminal jeopardy, and the Act has been so construed by the California Supreme Court.[12] The applicable provisions of the California Milk Stabilization Act do not differ in this regard from the provisions of the Pennsylvania Milk Control Law at the time the latter came before the United States Supreme Court for decision in the *Penn Dairies* case.[13]

Where minimum producer prices for fluid milk are established under federal marketing orders such prices are enforced in sales of fluid milk to the Federal Government notwithstanding the competitive bid requirements of the Armed Services Procurement Act and notwithstanding the possibility of a price increase to Federal agencies.[14] There can be no distinction in

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[12] *Pacific Coast Dairy v. Department of Agriculture*, 19 Cal 2d 818, 830 (rev'd on other grounds, 318 U. S. 285 (1943)).

[13] California Agricultural Code, Section 4504; Pennsylvania Act of April 28, 1937 (Pa. Stats., Title 31, Sec. 700 j-103 (defining "milk dealer" as "any person who *purchases or receives or handles* . . . milk") , and j-807 (providing for criminal penalties against "milk dealers") (emphasis supplied).

[14] *Knudsen Brothers Dairy, Inc. v. Benson* (U. S. D. C. Conn., Civil Action 8145, 1960) (case on appeal on other grounds under title of *Knudsen Brothers Dairy, Inc. v. Freeman*, Court of Appeals, Second Circuit, No. 26098) ("The plaintiff advances the argument that the payment order conflicts with the policy of competitive bidding utilized by the armed forces in procurement programs and should therefore be invalidated. It is true that the assessment may cause a partially regulated handler of outside milk to submit a higher bid figure as a result of the assessment. * * * Any increase in price which may indirectly result to the government in the purchase of milk supplies can therefore be justified since the requirement for payments to the fund insures a supply of quality milk in sufficient quantities which otherwise might be endangered due to the economic forces peculiar to this industry").

legal theory or in practical effect between the minimum producer pricing provisions of federal marketing orders applicable to fluid milk, and the California minimum producer and minimum wholesale pricing provisions applicable to fluid milk in an area where there are no federal marketing orders.

From an economic standpoint compliance with either California minimum producer prices or minimum wholesale prices will affect the ultimate price of fluid milk to federal agencies.[15] However, it is the specific point of the *Penn Dairies* case that state milk stabilization statutes are enforceable against persons selling milk to federal agencies on land over which the State has jurisdiction notwithstanding any possible effect of such regulations on prices charged federal agencies by fluid milk distributors. In this connection it is important for the Court to consider that 70% of the total volume of fluid milk purchased in California by federal agencies is purchased for resale through government-in-business retail stores known as commissaries. These stores are intended to be self-supporting; and may be operated by private persons;[16] and are in competition with privately owned retail stores. Only 30% of the total volume of fluid milk purchased is purchased with appropriated moneys for troop issue.[17]

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[15]The United States and the District Court below drew no distinction between the economic effect on federal milk purchases of California's minimum producer pricing regulations and of minimum wholesale pricing regulations. [Original Record, pp. 11, 670-672.]

[16]10 U. S. C., §2482.

[17]R. 814, 816, 817.

*Amici* urge, therefore, that the decision of the District Court below is directly contrary to the decision in the *Penn Dairies* case in holding that the application of the California Milk Stabilization Act (with its minimum producer and minimum wholesale pricing provisions) to sales of fluid milk to federal agencies conflicts with the Armed Services Procurement Act where such sales are made on land where the State of California has jurisdiction.

The issue of the jurisdiction of the State of California over the federal areas involved in the present case is fully presented at pages 14 through 24 of appellants' jurisdictional statement. *Amici* fully concur with such presentation. It is submitted that the District Court below erroneously determined that the United States had complied with applicable state law requirements necessary to obtain jurisdiction over the land areas involved in this case, such determination having been made without a trial and without affording opportunity to California courts to decide the meaning of California laws[18] and despite the circumstance that the California Milk Stabilization Act had been law in California for several years prior to acquisition by the Federal Government of the parcels of land involved in the case.[19]

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[18] [illegible] Court No. 2880 [illegible] filing Code No. [illegible] of California [illegible] fornia [illegible] Stat. [illegible]

[19] *Paige Cowlitz Corp. v. Hagerman*, 328 U. S. 285, 294; Jurisdictional Stmt., pp. 13-14.

## Conclusion.

It is submitted that appellants' jurisdictional statement presents substantial questions requiring decision by this Court.

Respectfully submitted,

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